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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,627	06/25/2003	Kelly Good	P214379	5070

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EXAMINER

NEWHOUSE, NATHAN JEFFREY

ART UNIT PAPER NUMBER

3727

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/606,627

Applicant(s)

GOOD, KELLY *ep*

Examiner

Nathan J. Newhouse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☒ Claim(s) 22-24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/8/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-21 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-21 of copending Application No. 10/367,088. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

3. Claims 1-21 of this application conflict with claims 1-21 of Application No. 10/367,088. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

### ***Claim Rejections - 35 USC § 103***

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland (US 6,491,191) in view of Bostelman (US 5,295,601).

Cleveland teaches a holding system for a dispensing gun with a product cartridge comprising a holding structure with a sidewall (20), barrel portion and a bottom wall (26) that is a cap. The sidewall has a main opening at the end (21) for the holding chamber. There is a belt clip (16) for attachment to a user. Cleveland does not teach the plug projection on the bottom wall extending upward into the holding chamber.

Bostelman teaches a cap for a product cartridge that is threaded and has a projection (18) to seal with the nozzle of the product cartridge. It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the cap of Cleveland with the cap of Bostelman having a projection to engage and seal the nozzle of a product cartridge to provide a more effective seal of the product cartridge while the gun and product cartridge is in the holding structure of Cleveland.

With respect to claim 5, Cleveland teaches a belt clip (16).

With respect to claim 8, Cleveland teaches the container portion (20) forming the sidewall and a portion of the bottom at end (23) around the nose (24) and the projection member is cap (26) as modified by Bostelman.

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With respect to claim 9, Cleveland teaches a clip (16) that is considered to be a support assembly. This clip or support assembly is attached to a belt of a user and therefore it will support the holding structure relative to a support surface (floor that the user is standing on).

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland (US 6,491,191) in view of Bostelman (US 5,295,601) as applied to claim 1 above, and further in view of Shelley et al. (US 5,302,302).

Cleveland, as modified above, teaches everything except for the holding structure having a hole at the lower end of the sidewall adjacent the bottom.

Shelley et al. teaches a similar holding structure attached to the waist of a user. Shelley et al. further teaches the holding structure having a hole (18) at the lower end of the sidewall adjacent the bottom wall to aid in removing the contents in the holding structure as a user can insert a finger and push the contents towards the opening at the upper end of the holding structure. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a hole at the lower end of the sidewall, adjacent the bottom of the holding structure of Cleveland as taught by Shelley et al. to aid in removing the contents (dispensing gun and product cartridge) of the holding structure.

7. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland (US 6,491,191) in view of Bostelman (US 5,295,601) as applied to claim 1 above, and further in view of Wu (US 5,620,163).

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Cleveland, as modified above, teaches everything except for the holding structure having a support assembly(claim 9) or support rack(claims 10) attached for supporting the holding structure relative to a surface.

Wu teaches a similar holding device for supporting articles on a user's belt by a clip device (1). The belt clip further has a pivoting support assembly or rack (2) that allows the article to be either held to a user's belt or supported on a surface by the support assembly or rack as shown in figure 9. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the belt clip device of Cleveland with a pivoting assembly or rack as taught by Wu to allow the holding structure of Cleveland to be supported on a user's belt or on a surface as desired by the user.

8. Claims 3-4, 6, 11, 13-15 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland (US 6,491,191) in view of Bostelman (US 5,295,601) as applied to claims above in paragraph #5, and further in view of Litman (US 4,588,116).

Cleveland, as modified above, teaches everything except for the holding structure having guide ribs.

Litman teaches a similar holster attached to the waist of a user and that it is well known to have guide ribs (30) on holding structures for guiding round objects into the holsters. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide guide ribs on the holding structure of Cleveland as taught by Litman to guide placement of the dispensing gun and product cartridge into the holding structure.

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With respect to claims 11 and 13-15, the method of holding a dispensing system for hardenable materials is taught by the combination set forth. In addition, with respect to claim 15, Cleveland teaches a clip (16) that is considered to be a support assembly. This clip or support assembly is attached to a belt of a user and therefore it will support the holding structure relative to a support surface (floor that the user is standing on).

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland (US 6,491,191) in view of Bostelman (US 5,295,601) and Litman (US 4,588,116) as applied to claim 11 above, and further in view of Shelley et al. (US 5,302,302).

Cleveland, as modified above, teaches everything except for the holding structure having a hole at the lower end of the sidewall adjacent the bottom.

Shelley et al. teaches a similar holding structure attached to the waist of a user. Shelley et al. further teaches the holding structure having a hole (18) at the lower end of the sidewall adjacent the bottom wall to aid in removing the contents in the holding structure as a user can insert a finger and push the contents towards the opening at the upper end of the holding structure. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a hole at the lower end of the sidewall, adjacent the bottom of the holding structure of Cleveland as taught by Shelley et al. to aid in removing the contents (dispensing gun and product cartridge) of the holding structure.

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10. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cleveland (US 6,491,191) in view of Bostelman (US 5,295,601) and Litman (US 4,588,116) as applied to claim 11 above, and further in view of Wu (US 5,620,163).

Cleveland, as modified above, teaches everything except for the holding structure having a support assembly (claim 15) or support rack (claim 16) attached for supporting the holding structure relative to a surface.

Wu teaches a similar holding device for supporting articles on a user's belt by a clip device (1). The belt clip further has a pivoting support assembly or rack (2) that allows the article to be either held to a user's belt or supported on a surface by the support assembly or rack as shown in figure 9. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the belt clip device of Cleveland with a pivoting assembly or rack as taught by Wu to allow the holding structure of Cleveland to be supported on a user's belt or on a surface as desired by the user.

***Allowable Subject Matter***

11. Claims 22-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan J. Newhouse whose telephone number is (571)-272-4544. The examiner can normally be reached on Monday-Thursday, 6:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (571)-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nathan J. Newhouse  
Primary Examiner  
Art Unit 3727